

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 160 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

1 Yes  
2 to 5: No

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COMMISSIONER OF INCOME TAX

Versus

AREEZ KHAMBHATTA FAMILY TRUST

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Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner  
SERVED BY RPAD - (N) for Respondent No. 1

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CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.R.DAVE

Date of decision: 09/02/99

ORAL JUDGEMENT (per J.N. Bhatt, J.)

The Income Tax Appellate Tribunal, Ahmedabad Bench 'A', has referred the following question of law for our opinion, by this reference application under sec. 256(1) of the Income-tax Act, 1961, at the instance of

the applicant, Commissioner of Income-tax, Gujarat-III, Ahmedabad, in relation to Assessment Years 1978-79 and 1979-80.

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in confirming the view taken by the Appellate Assistant Commissioner that despite the provisions of clauses 8(a) and 8(b) of the Trust Deed the assessee trust was a specific trust and not a discretionary one and is liable to be assessed accordingly?"

2. The respondent-assessee is a trust. It had submitted return of income on 31.3.1979 for the Assessment Year 1978-79, declaring total income as NIL, in response to notice under sec. 143(2) of the Income-tax, 1961. The assessee trust claimed to be a discretionary trust and, therefore, sought the benefit of the provisions of sec. 164 of the I.T. Act.

3. The assessee, as such, had paid interest to the beneficiaries, and this payment of interest came to be claimed as deduction from the total income of the assessee trust. The concerned ITO, while assessing the return of the assessee, by his order dated 12.3.1981, held that the said amounts of deduction claimed by the assessee from the total income, is not an allowable deduction. It was also not allowed in the previous year. The ITO, while passing the assessment order on 25.1.1982, relying on clauses 8(a) and 8(b) of the Trust Deed, found that the assessee trust was a discretionary trust and was liable to be taxed at the maximum rate under the provisions of sec. 164 of the I.T. Act.

4. In appeal, the Appellate Assistant Commissioner, however, found that the matter was identical to the one decided by the Appellate Tribunal, by its decision dated 20.9.1980, and following the same, directed the ITO to treat the trust as a specific trust and to determine the share of the beneficiaries and to make the assessment.

5. However, the Revenue, being dissatisfied, had filed an appeal before the Income Tax Appellate Tribunal, and the Tribunal held in favour of the assessee. In earlier identical case of Tanvi Sajni Family Trust, and relying on the said decision, the order of AAC came to be confirmed.

6. Our attention was invited to the case of CIT v. Tanvi Sajni Family Trust, reported in 209 ITR 497

(Gujarat). The view held by the Tribunal is reinforced by the view of this Court in Tanvi Sajni Family Trust (*supra*). We are in agreement with the view taken by this Court in that case. In that case, the assessee trust was found to be a specific trust as trust deed provided specified shares of the beneficiaries out of the net income of the trust. The facts of the present case are squarely attracting the ratio of the said decision.

7. Consequently, we answer, the question referred, in affirmative, that is, against the Revenue and in favour of the assessee. Accordingly, this reference stands disposed of without any order of costs.

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